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(City and County—Organized 1888)

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Liabilities and Obligations of Sellers of Personal Property

By ROBERT P. JENNINGS *of the Los Angeles Bar*

(This paper was read before the meeting of the Los Angeles Bar Association, Jan. 27, 1927.)

It is not the purpose of this paper to treat generally of the law relating to sales. That would be too large an undertaking. When one stops to consider that no kind of contract is so frequently entered into by anyone as that of purchase and sale, and further that a man spends a considerable portion of his life buying or selling something from the time he is first old enough to realize that money has a magic power of purchase not possessed by other property, until he may, perhaps, make advance arrangements for that final resting place which all of us must some day require, one glimpses the mass of law which must have grown up regarding sales and realizes that it would be impossible in a paper of this character to do more than sketch briefly some one particular angle of the subject. It is my purpose, therefore, to treat particularly of the liabilities and obligations which rest upon the seller of personal property, not by virtue of any particular contract of warranty upon his part, but those liabilities and obligations which the law imposes upon him, whether he will or not.

At first blush one might say: "What liability in the sale of goods does a seller assume? Does not the doctrine of *caveat emptor* apply and must not the buyer beware lest his purchase money be expended and nothing of value received therefor?" Such is, indeed, the general rule under the common law.

As the common law is substantially carried into our code, this, then, is the foundation upon which contracts of purchase and sale rest; but when one begins to erect thereon the super-structure of sales of particular character, then one soon finds that the foundation must be altered to suit the character of the finished product. The rule of *caveat emptor* is specifically recognized by section 1764 of the Civil Code which provides that, "except as prescribed by this article, a mere contract of sale or agreement to sell does not imply a warranty." However, note carefully the words which begin this section—"except as prescribed by this article." Immediately thereafter in one section after another there are listed some thirteen warranties which are implied on the part of a seller by the mere fact of the sale under certain circumstances, and it is mainly to the obligations and liabilities arising out of some of these implied warranties that the attention will be directed by this paper.

First there is the warranty which adheres to every sale of personal property. The Civil Code states this warranty in the following language: "One who sells or agrees to sell personal property, as his own, thereby warrants that he has a good and unincumbered title thereto." In other words, at one stroke there is eliminated from the troubles of the buyer the necessity of ascertaining whether the seller owns the goods which he sells as his own. This the law says the buyer may assume. In *Jeffrys v. Easton*, 113 Cal. 345, this rule, as laid down in section 1765 of the Civil Code, that the seller impliedly warrants his title, was recognized and in amplification thereof it was stated:

> "And the rule does not depend upon the knowledge, or want of knowledge, of the vendor as to the real state of the title, or upon deceit or fraud practiced by him. Parsons correctly states the rule as follows: 'In this country it is now well settled by adjudications in many of the states that the seller of a chattel, if in the possession, warrants by implication that it is his own, and is answerable to the purchaser of it if taken from him by one who

> has a better title than the seller, whether the seller knew the defect of his title or not, and whether he did or did not make a distinct affirmation of his title.' (Parsons on Contracts, 8th ed., 574.)"

and it was held that the buyer, by reason of such failure of warranty had a good defense against an action of the seller to recover purchase money.

Of course, this ought to be the law, for who can know better than the seller whether he has a good title? Certainly the buyer, as a rule, can know nothing about it. Furthermore, our code recognizes that the transfer of title is the important thing in an agreement to purchase and sell. Such an agreement, by our code, is not defined as an agreement whereby one party agrees to sell something to another, but is defined by section 1727 as follows:

> "An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing."

Likewise, under section 1728, an agreement to buy is defined as a contract by which one engages to accept from another and to pay a price for the title to a certain thing. Very reasonable, therefore, is it that when one sells an article he should be held to warrant that he has the title, the very thing that he is agreeing to transfer by the sale.

This warranty has been applied to shares of stock in a corporation. *(Kirkland v. Levin,* 63 Cal. App. 589.) Respecting a contention to this effect the appellate court says:

> "We are convinced that this contention is sound. Shares of stock are personal property (Civ. Code, sec. 324; 6 Cal. Jur. 732) and they are therefore directly within the letter of section 1765. They seem as clearly to come within the spirit of the enactment. Such is the rule in other states."

A second warranty is that implied from a sale by sample. Section 1766 of the Civil Code provides as follows:

> "One who sells or agrees to sell goods by sample, thereby warrants the bulk to be equal to the sample."

This section as well as most, if not all, of the other implied warranties respecting sales contained in the Civil Code expresses the rule of the common law. It is easy to be seen that justly the rule should be as the code states; for, if one sells by sample, he, in effect, expressly warrants that the goods he is selling are fairly represented by the sample exhibited. The theory of the rule is indicated by the language of the Supreme Court in the case of *Browning v. McNear,* 145 Cal. 272. In that case the plaintiff vendor had sold to the defendant vendee a quantity of barley. It appears that the vendee's agent had examined this barley and on one or two occasions had taken samples, but that these samples were taken without the presence of the plaintiff and without his knowledge, and it did not even appear that the plaintiff ever saw the samples. The court held that under such circumstances there was no sale by sample, saying:

> "It would be a novel application of the rule of warranty arising from sale by sample to hold that a vendor is to be held responsible for a sample that he has never seen or exhibited, and concerning which he has made no representation, and which was selected and taken by the purchaser himself or his agent upon an inspection of the property. On a sale by sample the law implies the warranty that the bulk is equal to the sample upon the theory that by his acts and representations the vendor assures the vendee that such is the fact. It says that where one makes or agrees to make a sale 'by sample,' such act on his part is a representation that the bulk is equal to the sample, an affirmation that the specimen exhibited is a fair sample of the bulk of the commodity. *(Gurney v. Atlantic etc. Ry. Co.,* 58 N. Y. 364.) The sale by sample contemplated by the law is one the circumstances of which indicate something in the way of representation by the vendor, to the effect that a sample exhibited fairly represents the bulk. To constitute a sale by sample it must appear that the parties 'contracted solely in reference to the sample exhibited, that they mutually understood that they were dealing with the sample as an agreement or understanding that the bulk of the commodity corresponded with it.' "

A third warranty and one which is certainly consonant with fair dealing and good morals is contained in section 1767 of the Civil Code and reads as follows:

> "One who sells or agrees to sell personal property knowing that the buyer relies upon his advice or judgment thereby warrants to the buyer that neither the seller, nor any agent employed by him in the transaction, knows the existence of any fact concerning the thing sold which would, to his knowledge, destroy the buyer's inducement to buy."

There is a paucity of decisions construing this section. It would seem that the matters intended to be covered by this section partake of the character of fraud—that is, if a seller knows that a buyer is relying upon the former's judgment and advice as to whether or not to buy an article, and the seller has information which he knows would destroy the buyer's inducement to buy, the concealment of such information, under such circumstances, would appear to be a species of fraud upon the buyer. There are several cases which simply hold that under the facts there was no implied warranty under section 1767, because there was no evidence that the seller knew that the buyer relied upon his advice or judgment, or there was no evidence that the seller knew the existence of any facts concerning the thing sold which would, to his knowledge, destroy the buyer's inducement to buy. Both of these things must be proven before any cause of action arises under the section. *(Waltz v. Silveria*, 25 Cal. App. 177; *Rauth v. Southwest Warehouse Co.*, 155 Cal. 54, 61; *Steen v. The Southern California Supply Co.*, 48 C. A. D. 62, 63.)

In the case of *Lamb v. Otto*, 51 Cal. App. 433, the plaintiff had purchased from the defendant an automobile. Some claim was made that section 1767 of the Civil Code applied, and the appellate court, in connection with this matter, says:

> "The appellant cites section 1767 of the Civil Code and contends that an implied warranty exists under the facts of this case. The undisputed facts show, among other things, that the seller was not the manufacturer of the machine in question; that he had for some time been using it; that it was a second-hand car; that it was present during nearly all of the negotiations and that the seller stated to the buyer that she could have it examined by any mechanic, but that she did not do so. The record does not show that it was at any time claimed, or that it is now claimed, that the seller occupied any position of trust or confidence toward the buyer. In *Kellogg Bridge Co. v. Hamilton*, 110 U. S. 108, 116, (28 L. Ed. 86, 3 Sup. Ct. Rep. 537, 542, see, also Rose's U. S. Notes), the court says: 'According to the principles of decided cases, and upon clear grounds of justice, the fundamental inquiry must always be whether, under the circumstances of the particular case, the buyer had the right to rely and necessarily relied on the judgment of the seller and not upon his own. In ordinary sales the buyer has an opportunity of inspecting the article sold, and the seller not being the maker, and therefore having no special or technical knowledge of the mode in which it was made, the parties stand upon grounds of substantial equality. If there must be, in fact, in the particular case, any inequality, it is such that the law cannot or ought not to attempt to provide against it; consequently, the buyer in such cases—the seller giving no express warranty and making no representations tending to mislead is holden to have purchased entirely on his own judgment.'"

The next warranty contained in the Civil Code is that in section 1768 which provides as follows:

> "One who agrees to sell merchandise not then in existence, thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties, and as nearly so, at the place of delivery, as can be secured by reasonable care."

It has been held that the word "merchandise" used in this section is of broad application and covers all kinds of personal property, even fruit which is to be grown by the seller. Regarding this matter the Supreme Court of this state, in the case of *Blackwood v. Cutting Packing Co.*, 76 Cal. 212, a case

which involved a sale of apricots to be grown by the plaintiff, says:

> "The plaintiff contends, in the first place, that apricots are not 'merchandise.' A walk through the markets would probably convince him that he is mistaken. It is said, however, that such fruit comes under the head of 'produce.' Very likely it does. But we think the word 'merchandise' is used in the above section in a large sense, and covers all kinds of personal property which is ordinarily bought and sold in the market. Whether it covers more than that need not be decided in this case. This point of plaintiff is not unlike saying that a promissory note between farmers is not a negotiatble instrument, because such an instrument is a creation of the law between 'merchants.' "

However, if the crop of fruit is on the trees practically matured at the time the contract of purchase is made, then it is not a crop to be grown in the future and under such circumstances the rule of *caveat emptor* would apply and no warranty would be inferred for the benefit of the vendee. *(Kennedy v. Grogan*, 17 Cal. App. 527-532.)

Very similar to this warranty of soundness and merchantability which is implied under an agreement to sell merchandise not in existence, is the warranty provided by section 1771 of the Civil Code to the effect that: "One who sells or agrees to sell merchandise inaccessible to the examination of the buyer, thereby warrants that it is sound and merchantable."

It was held in the case of *Elmer Brothers v. Carpenter*, 42 Cal. App. 206, that this warranty which is implied where the merchandise is not accessible to the examination of the buyer, would apply to a sale of trees for nursery stock, although in that case an express warranty was averred and its violation determined by the trial court which made the implied warranty immaterial.

Closely akin to some of these last mentioned code warranties, but yet apparently not definitely covered by any of them, is the warranty which arises out of the sale of an article of a particular variety or type. The nature of this warranty is thus explained in the case of *Newhall Co. v. Hogue-Kellogg Co.*, 56 Cal. App. 90:

> "(3) Where an article of a particular variety or type is ordered by name and the seller purports to furnish the same, with or without any express statement that the article furnished is of the kind ordered, a warranty of the identity of the variety or kind arises."

This warranty has been most often applied to sales of articles the nature or character of which could not be ascertained by a casual or even a careful inspection, such as sales of seeds or of nursery stock where the purchaser ordered seeds or stock of a particular kind or variety. Thus, in the Newhall case above mentioned, it was applied to a sale of lima bean seed. The purchaser ordered two varieties of beans known as Wilson's Improved Bush Limas and Henderson Bush Limas. After the seeds had germinated and resulting vines had begun to throw out runners, it was then observed that the seeds were not of the varieties ordered, but were of another very ordinary type, the beans from which were of but little value. It was held that the seller had, by the sale, warranted the type of beans and a judgment in favor of the plaintiff for over $9000 was affirmed on appeal.

The rule was also applied in the case of *Miller v. Germaine Seed and Plant Co.*, 193 Cal. 62, to a sale of celery seed, although for reasons to be presently mentioned, this did the plaintiff but little good. The Supreme Court, in the opinion in that case, discussed the matter of the nature of the warranty, saying:

> "It may be conceded that where a purchaser asks a seed dealer for a certain variety of seed and in pursuance of that request seed is furnished, that in the absence of any additional facts the law will, from the transaction, imply a contract of warranty. This warranty partakes of the nature of both an express and implied warranty. It is express in the sense that it is based upon the express language used

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The Taxing Power as an Aid to the Economic Use of Water

By REUEL L. OLSON *of the Los Angeles Bar*

Professor of Law, University of Southern California School of Law

Taxes never were popular and perhaps never will be. The same is perhaps true of those individuals who venture to suggest that additional items of property now untaxed be included in the list of taxable values under the laws of our own state.

In the last number of the *Bulletin*[1] the suggestion was made that the use of the taxing power might accomplish valuable results within California so far as securing the economic use of water is concerned. The possibility of subjecting riparian rights to taxation was briefly considered in connection with a short discussion of the Herminghaus v. Southern California Edison Company case.[2] Certain legal materials supplementary to the earlier discussion will be presented in the following paragraphs.[3]

The California Constitution provides that "all property in the state except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value."[4] "The word 'property,' as used in the constitutional provisions as to taxation, is expressly declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal and mixed, capable of private ownership, except a mortgage, deed of trust, contract, or other obligation by which a debt is secured, when land is pledged as security for the payment thereof, together with the money represented by such debt. The word 'property,' as used in the Constitution, is to be construed in the ordinary and popular sense. The words, 'and all other matters and things real, personal and mixed, capable of private ownership,' were intended to add something to what proceded them,— to refer to kinds of property not previously mentioned, not to qualify anything; it has been observed that they were doubtless inserted out of abundant caution to show that all kinds of property, whether specifically enumerated or not, were intended to be included in the property to be taxed, though not embraced in the specific classes previously mentioned. Under the Constitution and statutes, therefore, with certain exceptions, all property of every kind, nature and description, whether real or personal, corporeal or incorporeal, and whether owned by natural or artificial persons, is subject to taxation."[5]

Riparian rights constitute a form of property which may properly be the subject of taxation in accordance with the principles just stated. Furthermore, they have been regarded as severable from the land in favor of other riparian owners of the same stream.[6] "Riparian rights," however, "can exist only as part

[1]Olson, Reuel L., *Conservancy Districts and Riparian Rights*, 2 Los Angeles Bar Association Bulletin 11, (Feb. 3, 1927)

[2]73 Calif. Dec. 1, (Dec. 24, 1926).

[3]Press notices of February 9, 1927, refer to the work of the subcommittee of the legislative water conservation commission of the state legislature. This subcommittee is composed of Senators Ray Jones and John Inman, and Assemblyman Bradford S. Crittenden. These members of the State Legislature are reported as having conferred with William M. Finch, presiding justice of the Third District Court of Appeal, Max C. Sloss, former justice of the Supreme Court, Judge W. D. Tillotson of Redding, Attorney General U. S. Webb, and Fred S. Athearn of San Francisco, in formulating a constitutional amendment defining the limits of the riparian doctrine in California.

[4]Article XIII, paragraph 1.

[5]24 Cal. Jur. 72-73, and cases there cited.

[6]"*Gould v. Stafford*, 91 Cal. 146, 27 Pac. 543, is authority on the point that the owner of land with a water right appurtenant can convey the right while

and parcel of specific tracts of land, and any contract relating thereto would be void for uncertainty and of no avail unless it describes or refers to the land in a manner sufficient for identification."[7] Accordingly, any plan for the taxation of riparian rights must necessarily be predicated upon definiteness in the description of the land to which they relate.

That the courts will look with favor upon legislative action designed to meet the growing

retaining the land, and thus sever the connection." Estate of Thomas, 147 Cal. 236 (1905).

Duckworth v. Watsonville Water etc. Co., 158 Cal. 206 (1910), was a case in which a water company had obtained certain deeds from a riparian owner which conveyed "all and singular the water and riparian rights and water-rights and privileges of every kind, character and description, which belong or in any manner pertain to said land, save and except the necessary water for domestic and culinary purposes and the watering of stock." Concerning the severance of riparian rights from the land the court said: "Perhaps something more should be said regarding the effect of a conveyance, by the owner of riparian land, of his riparian right therein, to another for non-riparian use.—The water cannot be severed from the land and transferred to a third person so as to give him the title and right to remove it, as against other riparian owners.—The deeds conveyed the entire right to use this water for irrigation on these lands to the defendant's predecessors and it now belongs to the defendant.—A man who sells a right to do a thing cannot thereafter exercise the right himself, except by permission of the buyer, and it is immaterial that the buyer may not be using or exercising it. If the water company had obtained similar deeds from the owners of all the lands abutting upon the lake and its tributaries, it would have obtained a complete estoppel against such landowners which would have prevented them from interfering with any use it saw fit to make of the water, and such estoppel would undoubtedly extend to all the water of the lake. If, having this right of estoppel, it chose to use only a part of the water, or none of it, this neglect to use it would not give any of the owners the right to take that which the company suffered to remain unused. A judgment which purported to give such owners the unqualified right to use the water on their respective tracts, as against the company, would operate to deprive the company of the property which it had bought and paid for and to return that property to the person who sold it and received payment of the price."

[7] *Title Ins. Etc. Co. v. Miller & Lux, Inc.*, 183 Cal. 71, 81, (1920). "The agreement of 1879 is not sufficient of itself to establish the riparian rights of the parties thereto in any land. It is too uncertain to have that effect. It does not describe any land, but merely shows the area 'signed for,' as one of the witnesses expressed it, by the several parties."

needs and changed condition of the people, is indicated by certain language in *Veterans' Welfare Board v. Jordan.*[8] The court there stated:

> "It is obviously the view of the Supreme Court of the United States, and in this view we concur, that the broad general restrictions against the taking of property without due process of law ought not to be construed so as to prevent legislative action adjusted to the growing needs and the changed condition of the people. The situation existing where there are relatively small areas of public lands available for settlement is vastly different from that which confronted our ancestors when the great problem before the public was the settlement of the vast areas of fertile and vacant land which was offered to settlers at nominal prices. It is well recognized in this state that small tracts of five, ten, fifteen and twenty acres are sufficient for a single settler if accompanied by an adequate water right and used for horticulture, and that large areas of land without water are only available for perennial crops, and for that reason yield support to comparatively few people."

It was also the conclusion of the court in the case just cited, that the raising of funds by taxation and the expenditure thereof for the purchase of land to the end that it be subdivided, improved, and disposed of in accordance with the Veterans' Act of the state, is a public purpose.

> "Our problem, then, is reduced to this, is the raising of funds by taxation and the expenditure thereof for the purchase of land to the end that it be subdivided, improved and disposed of as by the terms of this act provided, the exercise of the power of taxation and the expenditure of public funds for a public purpose? . . . Is there not abundant room for arguing that the development of our unoccupied lands suitable for agriculture by a land policy which would encourage the settlement thereon of home owning farmers, will materially contribute to the welfare of our people as a whole? Can it not be argued with a fair show of reason that not only will such a policy ultimately lead to the enchantment of the material wealth of the state, but that it will also make for better citizenship, better notions of necessity for law and order, and a sounder and saner patriotism? In the light of the debatable character of these questions, we are quite convinced that it is not within the province of the judicial branch of our government to answer in the negative.

> "This court has taken a liberal view in determining what constitutes a public purpose. In *Daggett v. Colgan,* 92 Cal. 53 (27 Am. St. Rep. 95, 14 L. R. A. 474, 28 Pac. 51), an act appropriating money for the erection of buildings and maintenance of an exhibit at the World's Fair Columbian Exposition in 1893 was held constitutional. It was held in that case that the question of whether or not a statute effects a public purpose is held to be largely one for the determination of the legislature itself, a determination only to be interfered with in cases where it is clear that the legislative discretion has been abused. A similar appropriation was upheld by the supreme court of the State of Kentucky [*Norman v. Board of Managers, etc.,* 93 Ky. 537 (18 L. R. A. 556, 20 S. W. 901)]. Our constitution was amended to allow public debts to be incurred in furtherance of the Panama-Pacific International Exposition to be held at San Francisco. Our laws for the irrigation, reclamation, and drainage of land by moneys raised by taxation, or local assessment, have been held constitutional upon the theory that the work so authorized to be done was in furtherance of the public interest and promoted the general welfare and was for that reason a public and constitutional purpose. If it is legitimate to tax or assess the land within a given area described as an irrigation district for the purpose of bringing water to and distributing it upon the lands within the district, as has been so frequently held in this state and affirmed by the Supreme Court of the United States, it must follow that a land settlement plan by which an agency of the state is to secure land, conduct water to it and provide for its distribution thereon, is equally a public purpose, although for the purpose of carrying out the plan the Legislature authorizes the acquisition of the title of the land and the

[8]189 Cal. 124, 143 (1922).

(Continued on Page 14)

Notice of Taking of Plebiscite on Candidates for Judge of the Municipal Court

NOTICE IS HEREBY GIVEN:

That Los Angeles Bar Association will hold a plebiscite on candidates for Judge of the Municipal Court at the coming election. Said plebiscite will be held in accordance with the constitution and by-laws of the Association.

All candidates *must give their names and necessary biographical information* to the Secretary of the Association not later than *February 21st, 1927*. Blanks furnished on application to Secretary.

By order of Board of Trustees of Los Angeles Bar Association.

R. H. P. VARIEL, Jr.,
Secretary.

EUGENE OVERTON,
President.

Assessment of Intangible Personal Property

ED W. HOPKINS
Assessor

E. O. WEED
Chief Deputy

COUNTY OF LOS ANGELES
4th Floor, Hall of Justice
Broadway and Temple St.
Los Angeles, California.
January 28, 1927.

Los Angeles Bar Association,
687 I. W. Hellman Building,
Los Angeles, Cal.
Attention of R. H. F. Variel, Secty.

Gentlemen:

Your members will no doubt appreciate the courtesy if you will refresh their memory concerning the provision of Section 3627a of the Political Code relating to the assessment of intangible personal property.

Many attorneys were placed in an embarrassing position in acting as legal advisors to executors and administrators of estate by reason of failure to advise them of the necessity of declaring such property for taxation at the proper time, viz.: between the first Monday in March and the first Monday in July, in order to avoid the heavy tax (14 times more) provided for failure to file the necessary statement. The law, in part, states that:

"Notes, debentures, shares of capital stock, bonds, solvent credits and mortgages or deeds of trust, not exempt under the laws of this State, shall be assessed at 7% of the full cash value thereof;

"PROVIDED, that the taxpayer shall have included such property in his annual statement, under oath, made and delivered to the Assessor as required by law (first Monday in March to first Monday in July)."

"AND PROVIDED FURTHER, that in the event of failure or refusal to file such statement such property shall be assessed at its full cash value."

"In determining the full cash value of the properties hereinbefore enumerated in this section, the Assessor shall not take into account the existence of any custom or common method, if any, of assessing any other class or classes of property, at less than the full cash value thereof."

You can see from the above excerpts of the law that there is no qualification exempting anyone from its provisions on account of extenuating circumstances. Also that the Assessor is permitted no discretion in the matter, but must assess such property either at 7% under the conditions named, or at 100% under the alternative conditions.

Yours very truly,

Ed W. Hopkins,
County Assessor.

McD:NB By F. J. McDevitt, Deputy.

TAXING POWER AS AN AID

(Continued from Page 12)

subsequent sale of the land as so improved."[9]

If it be proper to raise funds by the generally accepted methods of taxation for the purpose of fostering a more intensive cultivation of the lands of the state, even though accomplished by veterans, it might also be argued that persons claiming to own riparian rights may be required by legislative act or constitutional amendment to declare the value of such alleged rights in order that a tax per unit of value might be placed thereon for the purpose of causing each owner of riparian rights to make the most economic use of his property. Having declared the value of asserted riparian rights at a certain figure, the owner would be bound thereby except for the amount of increase in value thereof subsequent to the date of declaration. Such increased value might be due to varied causes affecting property values generally, and to specific causes affecting the value of riparian rights in particular. This question of valuation should be dealt with in the manner in which similar problems of valuation for taxing purposes are now handled.

[9]189 Cal. 124, 144, 145. (1922)

Report on Election of Officers and Trustees

February 15, 1927.

Trustees Los Angeles Bar Association,
Los Angeles, Cal.

Gentlemen:

The special committee appointed by President Overton to canvass the ballots cast for the election of Officers and Trustees of the Los Angeles Bar Association for the ensuing year of 1927-28, begs leave to submit the following report of the count made at the office of the Secretary, on Tuesday, February 15, 1927, at 2:30 P. M.

Total ballots mailed out by Secretary	1,843
Total ballots received by the Secretary	826
Ballots rejected because voters names were not indicated on identification envelope	24
Total ballots counted	802
For President—Kemper Campbell	763
Scattering among 7 candidates	14
For Senior Vice-President—Hubert T. Morrow	786
Scattering among 4 candidates	6
For Junior Vice-President—Leonard B. Slosson	776
Scattering among 1 candidate	1
For Treasurer—T. W. Robinson	796
Scattering among 0 candidates	0
For Secretary—R. H. F. Variel, Jr.	795
Scattering among 0 candidates	0
For Trustees—	
Alfred L. Barrett	770
Lawrence L. Larrabee	768
Irving M. Walker	764
Scattering among 25 candidates, no one of whom received more than 1 vote	25

Respectfully submitted,

PHIL. S. GIBSON, *Chairman*,
S. BERNARD WAGER,
TRENT G. ANDERSON,
STEADMAN G. SMITH,
CHAS. L. NICHOLS.

ATTEST:
R. H. F. VARIEL, Jr.
Secretary.

Message of the Los Angeles C of of Certified Ac

Certified Accou Render ial S

Corporate business without an ad effi more dangerous position than the prov p wit

Vast sums have been lost annuall for ested executives of legitimate business s, bec ment to provide a proper system of ac

In many cases observed, even c atutes "penny-wise and pound-foolish" polic neffici the rule of a company.

Accountants, particularly Certifie Accou credit for the high professional standa ed.

During approximately four and s of n of Corporations in California, the tren lue o as well as to specific clients, by vario Pub brought to the attention of that State L

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an ac efficient system of accounting is in a
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EDWIN M. DAUGHERTY,
formerly Commissioner of Corporations in California.

The Defense of the Helpless and Unfortunate

(Reprinted from the San Francisco Recorder)

No one who really believes in justice can logically criticize the principle involved in the following article by Hon. William T. Aggeler, public defender of Los Angeles County. The people of California have always desired that poor persons accused of crime should be defended. To that end they have clothed the judges of the criminal courts with authority to appoint counsel where defendants were unrepresented and were unable to employ attorneys to defend them.

Usually those appointed were young lawyers recently admitted and it became apparent that the defendant frequently suffered through an inadequate presentation of his case by reason of their inexperience and lack of money to secure the attendance of witnesses. Out of that realization grew the office of public defender, first created in California in Los Angeles County and later in San Francisco, pursuant to a statute enacted in 1921 (Stats. of 1921, p. 354), which creates the office of public defender "in each county and city and county of the State of California, the Board of Supervisors so deciding." Thus far the only Board of Supervisors "so deciding," outside of Los Angeles County, has been the Board of Supervisors of the City and County of San Francisco.

In the interest of justice there should be such an officer at least in the larger counties of the state, whose appointment should not be permissive but mandatory. An amendment to the statute to that end would be in the interests of justice and should be made at this session of the Legislature.

By WILLIAM T. AGGELER

Public Defender of Los Angeles County

The law says everyone accused of crime is presumed to be innocent and that this presumption of innocence abides with him during the entire trial; that he is clothed with it when the jury retires to deliberate upon a verdict and that during the deliberation of the jury each member should consider, weigh and appreciate the evidence in the light of this humane principle of law.

This principle of law represents the accumulated wisdom of all the ages and all the mighty intellects by and through which our law has been built up. It is recognized in every court of justice worthy of the name of a court of justice the world over. It is written into the statute books of every state of our Union. It is older than our government. It comes to us from over the seas whence we received the common law principles which are written in our laws and are recognized in our courts. It is invoked at every criminal trial. It appeals to the sense of justice of every normal man or woman.

The Constitution of California (Article I, Section 13) provides in criminal prosecutions the accused shall have the right to a speedy and public trial; to have the processes of the court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. The same section provides also that no person shall be compelled, in a criminal case, to be a witness against himself; nor be deprived of life, liberty or property without due process of law.

These constitutional provisions are safeguards for the protection of the innocent, "safeguards which were secured by the people, not by criminals, but by righteous, God-fearing people after nearly a thousand years of suffering and struggle." Yet, if an accused be brought before the bar of justice charged with a public offense and is without counsel, these humane presumptions of law and constitutional guaranties will avail him nothing.

How may council be provided for one accused who is without money or lawyer?

Should the state employ an attorney (district attorney) to prosecute persons accused

of crime and also employ another attorney (public defender) to defend those accused?

The above question should be answered in the negative if the purpose of a trial is simply to secure a verdict of guilty from the jury regardless of the merits of the case. It should be answered in the affirmative if the object of a trial in a court of justice is a search for truth. Not every one charged in a court of justice with the commission of a public offense is guilty. The law of California says:

> "A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal." (Penal Code, 1096.)

The law is administered by human instrumentalities and is therefore subject to human weaknesses and frailties. The facts of a case are not known by court, district attorney or counsel for defendant until the trial is had. The finding of an indictment by a grand jury or the filing of an information by a district attorney does not establish the guilt of the accused. Even a verdict of guilty by a trial jury does not always prove the guilt of the defendant. Innocent men are convicted and sent to prison cells. During the last two years five persons have been pardoned by the Governor upon request of the district attorney of Los Angeles County alone because evidence discovered after the trial demonstrated that these prisoners confined behind the cold gray walls of San Quentin, torn from wives, children and mothers, were innocent. How many other unfortunates are also guiltless but are unable to demonstrate their innocence?

The District Attorney is at times referred to as a quasi-judicial officer whose duty is to present all the evidence both for and against the defendant. He was to be as solicitous for a verdict of "not guilty" as a result of which the defendant would walk free from the courtroom, as he would be for a verdict of guilty, by which the accused would be condemned to a felon's cell or suffer death on the gallows. He was to have this unbiased attitude, this judicial poise, during all the proceedings and throughout the trial, even though it were he, himself, who had charged the defendant with the most flagrant violation of the law. The task was not possible. It soon became apparent that the district attorney could not represent both sides of the controversy at the same time. He could not blow hot and blow cold with the same breath. The district attorney now represents the people and prosecutes the case, leaving the accused to make his own defense. This, of course, he may readily do, provided he is wealthy or has rich and influential friends. In such a case experienced and skillful lawyers would be hired and his case presented to the jury. He would have his day in court. The great constitutional guaranties would have potency and meaning.

What should be done in behalf of an accused person who has no lawyer, no money and no friends? So distinguished an authority as ex-President Taft, now Chief Justice of the United States Supreme Court, calls attention to the helpless condition of the poor man in court. He said:

> "Of all the questions which are before the American people, I regard no one as more important than this, to-wit, the improvement of the administration of justice. We must make it so that the poor man will have as nearly as possible an equal opportunity in litigating as the rich man, and under present conditions, ashamed as we may be of it, this is not the fact."

A committee of the American Bar Association, charged with the duty of investigating the causes of crime, on March 12, 1925, reported five reasons for crime in the United States. One of the five was stated to be

> "a growing belief on the part of the masses throughout the country that the courts are only for the rich, and that they deny justice to the poor, with a resultant tendency on the part of the poor man to take the law into his own hands."

Los Angeles County answered the question of paying counsel to prosecute and also coun-

sel to defend in cases of the poor and helpless in the affirmative by the establishment, on January 5, 1914, of the office of public defender. The public defender is the poor man's friend regardless of race or color. By the law he is charged with defending, without expense to them, all persons who are not financially able to employ counsel and who are charged in the Superior Court (the trial court) with the commission of any contempt, misdemeanor, felony or other offense. He also prosecutes all appeals to a higher court or courts, of any person, where, in his opinion, such appeal will, or may reasonably be expected to, result in a reversal or modification of the judgment of conviction. The public defender not only represents poor persons charged with crime, but also indigent persons in civil cases where the amount involved does not exceed $100 and the sum claimed arises out of damages or is for labor performed.

During the fiscal year ending June 30, 1926, 19,439 persons called at the office of the Public Defender of Los Angeles County for aid in civil matters. Each felt that he or she had been wronged and came seeking redress. Practically every one of them left convinced that government institutions existed for their benefit as well as for the benefit of those financially able to employ attorneys and invoke the power and majesty of the law. The maxim that "every wrong has a remedy" had a real meaning to them and caused them to respect the government.

The office of public defender has made it possible each year for many thousands of worthy poor people to obtain justice in civil matters which would have been denied them if dependent upon representation by paid private counsel. They could not have paid the lawyer's fee. It has made the law mean something to them.

During the last fiscal year the same office handled 1328 felony cases.

It would be a good way to instill patriotism in the minds and hearts of the poor to establish the office of public defender in the gre

centers of population. Tens of thousands of men and women would by actual demonstration be convinced that the government was their government, that it existed for them as well as for their more successful neighbors.

(Continued on Page 25)

LEGAL COUNSEL
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NOTARY PUBLIC
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GEORGE VARNUM
ATTY. AT LAW
ANAHEIM
CAL.

January 18, 1927.

Mr. Chas. L. Nichols,
Editor, *Bar Association Bulletin*,
687 I. W. Hellman Bldg.,
Los Angeles, Calif.

Dear Mr. Nichols:

The "idea" of Hewitt, Ford, McCormick & Crump, of making removal, firm association, changes in law partnerships and location notices of law firms, meets with hearty approval, especially from us of the adjoining counties.

It should wholly supercede the old-fashioned, cumbersome, expensive and ineffective plan of personal mailings.

Suggested by this "Unfolded Opportunity" to thus serve the Bar, may I submit the further thought: That perhaps in some special edition, or possibly through your efforts by someone else, a list of attorneys be included in an issue that would indicate their membership in Bar Associations. The name preceded by an asterisk (*) to indicate the Los Angeles Bar Association; add an asterisk for the California, and another character for the American Bar Association.

Even in Los Angeles, and still more so in our adjoining counties, it is impossible to maintain personal knowledge of the constantly increasing number of attorneys, and some knowledge of professional associations seems to me to be obviously desirable.

Cordially yours,

GEORGE VARNUM.

JOHN PERRY WOOD
G. HAROLD JANEWAY
EDGAR G. PRATT

Announce to the profession the dissolution of the law firm

of

WOOD, JANEWAY & PRATT

MR. JANEWAY and MR. PRATT will continue in the practice at 718 Title Insurance Building

MR. WOOD has established new offices at 603 Title Insurance Building

Case Notes*

ALBERT E. MARKS *of the Los Angeles Bar*

Judicial Review—*Herminghaus et al v. Southern California Edison Company, et al,* 73 Cal. Dec. 1, December 24, 1926.

The Supreme Court of California in the instant case adds further illustrative material useful as a guide in groping through the penumbra separating legislative from judicial power.[1] The majority opinion of the court is to the effect that it is beyond the power of the legislature "to arrogate to itself the right to determine what are the 'useful and beneficial purposes' to which lands held in private ownership shall be devoted or to which those riparian rights which are an integral part and parcel of such lands and which are already vested rights shall be limited in their use and enjoyment."[2]

The court was directing is remarks to the question of the validity of Section 42 of the Water Commission Act of 1913 (Stats. 1913, p. 1012) which declared that the term "useful or beneficial purpose" as used in that act should not be construed to mean the use in any one year of more than two and one-half acre feet of water per acre in the irrigation of "uncultivated acres of land not devoted to cultivated crops." To quote:

> "The extent to which—riparian land-owners need, and use, and are entitled to have the benefit of the flow and overflow of such waters under their vested riparian rights therein, is a matter which depends upon the circumstances of each particular case; upon location, aridity, rainfall, soil porosity, responsiveness, adaptability to particular forms of production and many other elements which render the question essentially one for judicial inquiry and determination in all cases involving the proper use of water upon both cultivated and uncultivated areas. To concede that the State Legislature has the right arbitrarily to fix as to the latter the amount of water which the riparian proprietor may take and use thereon would be to concede an equal power to make a like arbitrary fixation in respect to cultivated areas also, entirely regardless of the foregoing elements which are necessarily the determining factors in such fixation. To concede this would be to concede to the legislative department of the state government the arbitrary power to destroy vested rights in private property of every kind and character."[3]

This language points definitely to the conclusion that any plan to promote the economic use of water in this state, whether adopted in the form of a constitutional amendment or otherwise, will have to make proper provision for judicial review of the question of how much water a particular claimant "needs" in point of law. The manner of determining the quantity of water required by a landowner is held to involve the application of the judicial process. A particularized hearing must be held in which the circumstances of the case are to be probed. Among the data to be examined are those relating to "location, aridity, rainfall, soil porosity, responsiveness, adaptability to particular forms of production."

How to secure this judicial review at the present time when this very determination of the extent of the "needs" of different areas of land within the state must necessarily condition any steps toward securing a workable system for the economic use of our water re-

[1]Certain other features of the Herminghaus-Southern California Edison Company case have been discussed in the columns of the *Bulletin*. Olson, Reuel L., *Conservancy Districts and Riparian Rights*, 2 Los Angeles Bar Association Bulletin 11, (Feb. 3, 1927).

[2]73 Cal. Dec. 1, (Dec. 24, 1926).

[3]Ibid., p. 24.

***Editor's Note*—The *Bulletin* will be pleased to accept for publication reviews of, and comments on, recent decisions; and members of the bar are urged to co-operate with Mr. Marks in making *Case Notes* a noteworthy feature of the *Bulletin*. Reviews should be mailed to the *Bulletin* office.**

sources, is the important question. Perhaps plans now being formulated contemplate a judicial determination of the extent of all present "needs," and make provision for the judicial evaluation of claims whenever asserted subsequent to the original determination. Some such procedure seems essential.

REUEL L. OLSON.

DEFENSE OF THE HELPLESS

(Continued from Page 22)

In criminal cases the accused without means now realizes that his case has been as well and as ably handled in all its stages from arraignment until final proceedings as any case where the defendant had ample means and was represented by high-priced private counsel. Ethical standards have been raised. The atmosphere in the criminal court is more wholesome; surroundings there have a much better moral tone. There are fewer so-called attorneys who live off the misery of those within the jail and the anguish of relatives who are without.

The accused, even if condemned to a felon's cell, and many of them are, serve their time with much less bitterness. They formerly complained that if they had had money and could have retained good counsel they would have been free. Now they are convinced that every legitimate effort was exerted in their behalf, and that lack of money made no difference. This is important because each year a large number of prisoners are released from the state penal institutions. It is far better that they go out from prison walls and return to society with a consciousness of fair dealing on the part of the authorities than that they should be resentful and believe that they were punished simply because they had no money. The chance is far greater that an ex-convict will reform who feels that he has been fairly treated rather than one who is nursing a chronic grouch against society and the government.

Book Reviews*

By HARRY GRAHAM BALTER *of the Los Angeles Bar*

Pleading and Practice. Leon B. Yankwich, L.L.B., Jur. D., Professor of Law, St. Vincent School of Law, Loyola College, Los Angeles, Cal. Handbook with Forms, 1926. 680 pages, $7.50. O. W. Smith, publisher, 122 North Broadway, Los Angeles, California.

The importance of the adjective side of the law is too often underestimated by lawyers in general, and by the beginner in particular. The better law schools now devote very little time to this branch of the law, and as a result though he may have a sound grounding in the fundamental concepts of law, and may even know a smattering of the works of Azo or Fleta, the young lawyer, almost as soon as he becomes involved in any sort of litigation, finds himself helplessly at sea in a maze of intricate pleadings and a thousand and one rules of practice which he never before heard of or never paid any attention to. And even the experienced practitioner often wishes that he could take the time off to thoroughly master the fundamental principles of pleading. A reunion with fundamentals is often highly refreshing.

Mr. Yankwich's "Handbook" should prove to be a welcome aid to the practicing attorney as well as to the law student. The scope of the work although neither pretentious nor very extensive is yet complete. The subject matter is set out in an extremely concise manner; however, where necessary, the author has elaborated sufficiently to thoroughly explain the principle involved. The thirty-four chapters in the book cover the more important principles of code pleading from the Nature and General Character of Pleading through Provisional Remedies, including Courts and their Jurisdiction; Private Rights and Election of Remedies; Parties of an Action; Complaint; Answer, Demurrer and Motions; Amended and Supplemental Pleadings; Rules of Pleading; Statute of Frauds; Limitation of Actions; Wrongs, Rights and Remedies; Issues; Commencement, Termination and Pendency of Actions; Process; Judgment; Judgment by Default; Trial by Jury; Trial by Court; and New Trial. Instead of an appendix of forms, the author has deemed it advisable to append three complete judgment rolls in three distinct proceedings: 1. Trial by court; 2. Trial by jury; 3. A default case.

It is only fair to add that this small volume can hardly serve the function of a digest of the law of pleading and practice, nor as an elaborate text where answers to intricate questions of pleadings can be readily found. Its value lies rather in the fact that in its small compass is found a mass of valuable material, from which the searcher in quest of the answer to his problem may acquaint himself with the underlying principles involved. The quotation of numerous code sections, and the excerpts from the best considered cases on the various subjects treated, will aid him.

To the law student, the "Handbook" should prove to be a great aid, both because of its clear statement of the leading principles of code pleading and also because of its wealth of ready references made accessible to the reader.

Pleading is an art; and the handiwork of a master inspires admiration. The observations of Judge Bliss in his treatise on Code Pleading are pertinent:

"I have given no precedents. Indeed,

*The *Bulletin* announces that commencing with this issue, *Book Reviews* will be one of its regular features.

The *Bulletin* is fortunate in having secured the services of an exceptionally well-qualified editor, Mr. Harry Graham Balter, to conduct this department. Mr. Balter is a graduate of California University, having received the degree of A.B. (1924) and J.D. (1926), and was associate editor of the *California Law Review* during the years 1924-26.

had I room, I know not how they could be of much real service. The pleader has to do with substance and not with forms. There are no 'approved modes of expression' to be copied; no formal general statements which are assumed to cover the cause of action whether they do or not; no formulas or fictions as applied to, and so distinguish different forms of action; no crystallized modes of opening and closing; no constantly recurring venue, whether real or fictitious; and it was chiefly this which rendered precedents necessary. It is more necessary than before for the pleader to be a good and careful lawyer; also that he should be able to write good English.

"His knowledge must be substantial, and in studying his statement he studies his case. He must know what issuable facts will constitute a cause of action, and must put them on paper, and put there nothing else." (Handbook, p. 44.)

The Colorado River Compact. Reuel Leslie Olson, A.M., J.D., Ph.D., Professor of Law, University of Southern California. 1926, pp. 527, $8.00. Published by the author, Los Angeles, California.

Blind optimism when not tempered by an intelligent understanding of the problem is often very harmful. So many of us have loose notions about the Boulder Dam Project that an intelligent discussion of the subject may prove to be an unwelcome revelation of our naive ignorance.

Professor Olson's work is a distinct contribution to the field—complete, scholarly, lucid. The work is a compendium of information, gathered and gleaned from the most hidden sources. But it is more than a digest of facts; a searching and understanding mind has assembled and correlated the wealth of material.

Since November 24, 1922, when the Colorado River Compact was signed at Santa Fe, New Mexico, the problem of how the waters of the Colorado should be parcelled out has become more and more acute, until today it is threatening to foment ill-feeling among those states most needful of the Colorado's help. The problem of the Colorado presents a challenge.

"The challenge today is not only one to the individual farmer. It is more than that.

It is a challenge to community organization through government agencies, for no private individual is equal to the task of conquering the desert. No one citizen can tunnel through ranges of mountains. Cities must be supplied with water, irrigation districts must be organized, and a host of other projects likewise depend upon governmental action in one form or another. Whether for good or ill, the day has arrived in American community development. when the self-sufficiency of the individual is coming to be replaced in large measure by dependence upon governmental agencies. At first sight, this seems to mean that there is less place today for strong individualism than in the past. But such is not the case. An individualism stronger than any we have yet seen is required of the men who will see the problems of the Colorado, and similar problems in their true setting. . . . . The Colorado River, a natural asset of peculiarly regional importance, should not be plundered by private greed or public incompetence. It stands as the surviving representative of those forces of nature in whose mastery the American spirit has grown strong. It, too, may be made to serve the purposes of man, when a sufficiently large number of individuals apply themselves to bring about the achievement of the task." (pp. 7-8.)

The six chapters beginning with the Introduction, going through the Analysis of the Compact, the Engineering Background, the Economic Background, the Constitutional Questions, and concluding with the Political Issues, leave the reader with a full appreciation of the intricate and seemingly insoluble problems that must be hurdled before a real agreement between all interested parties can be reached.

The author's suggestion of a Colorado River Authority similar to the Port of New York Authority, for the control of the river, is worthy of thorough investigation. The most important problem however is to first thoroughly educate the seven interested states to a sense of co-operation—so long as each wants a lion's share, progress is difficult, if not impossible.

Anyone who is at all interested in the problem of the Colorado should read *The Colorado River Compact*. The extremely favorable impression already made by this work upon the men most closely connected with the actual investigation and working out of the problem, is high recommendation of the book's intrinsic value.

LIABILITIES AND OBLIGATIONS OF SELLERS

(Continued from Page 8)

by the purchaser in his order or request, it is implied in the sense that it results from the circumstance that the request for seed is from a grower of celery to a seller of celery seed for the purpose of raising celery plants, and, therefore, the character of the seed is an essential and vital provision of the contract between the parties."

A judgment for the plaintiff, however, was reversed because the trial court had refused to instruct the jury regarding a custom among seed dealers that no seeds were warranted as to name, description, quality or productiveness. Although the plaintiff had purchased from the defendant celery seed of a golden yellow California stock, and although the seeds, after germination, proved to be ordinary green celery seed, the plants from which were of no commercial value, it was held by the Supreme Court that the warranty which would ordinarily result from such a sale would not attach in this instance if there was proof of a general custom among dealers in seeds that they would not warrant the kind or variety of seeds, and the Supreme Court says that the rule seems to be uniform that a party to a contract may be bound by a custom not inconsistent with the terms of a contract, even though he is ignorant of the custom, if that custom is of such general and universal application that he may be conclusively presumed to know of the custom. The case was reversed because of failure of the trial court to instruct the jury in accordance

with this rule of law. Upon this general matter, the Supreme Court, at page 75, says:

> "It is established by the foregoing authorities that in order that the sale shall be upon a warranty there must be two factors present,—first, an affirmation of a fact by the seller with reference to the thing sold, and, second, an intention on the part of the seller that his affirmation shall be a warranty to the buyer. The affirmation of the fact is shown by direct evidence, and the intent to warrant is inferred from the facts and circumstances surrounding the sale. In the case of the sale of seed for planting, the description of the seed by the seller is an affirmation of a fact concerning the thing sold. From the fact that seed is sold for planting and that the description of the seed is therefore a vital element in the contract, the intent, on the part of the dealer, to warrant that vital fact to the buyer is inferred. We have thus the two essentials of a warranty. If, however, there is a general custom among sellers of seed not to warrant the seed sold by them, we cannot, in the face of the universal custom, infer an intent on their part to warrant the seed from the facts and circumstances of the sale, because among these facts and circumstances is the custom of nonwarranty, which precludes the inference of an intent to warrant. In such a case the proof of the custom does not contradict or vary the terms of an express warranty, but establishes that there never was any (express) warranty at all, for the intent to warrant was absent. It is conceded in this case that if the purchaser knew of the custom he could not recover, and the court so instructed the jury. This being conceded, the only remaining question is whether a purchaser who contracts with dealers in seed is bound by such a general custom of the seed trade, even if ignorant of the custom. A customer cannot by his mere ignorance of a general custom of nonwarranty impose upon a dealer a contract of warranty which he never intended to make and which the slightest inquiry would disclose to the purchaser was not intended to be made."

It would impress one that this case was a very great hardship upon the plaintiff, who had bought his seed in good faith, had planted the same and brought it far enough along toward maturity to discover that the crop was not of the character desired—all at large expense—only to find that he had no redress because of a custom among seed dealers, unknown to him, that they did not, and would not, warrant the variety of seeds sold.

This warranty was very early applied in this State in the case of *Flint v. Lyon*, 4 Cal. 17. In that case the defendant had purchased from the plaintiff a cargo of flour known as Haxall flour. As a matter of fact, the flour was not Haxall, but was another brand known as Gallego. There was evidence that Gallego flour and Haxall flour were practically the same in price, but the Supreme Court, at page 21, says:

> "It is a matter of no consequence that there was at the time little or no difference between the prices of Haxall and Gallego flour. What the inducement was to the defendant to purchase Haxall, we know not; but having purchased that particular brand, he was entitled to it, and could not be compelled to accept any other as a substitute.
>
> "The use of the word 'Haxall' in the sale-note amounted to a warranty that the flour was Haxall."

Again, in the case of *Shearer v. Park*, 103 Cal. 415, the same warranty was applied to the sale of fruit trees, the buyer having purchased certain specified varieties by name. The Supreme Court says that the seller thereby warranted that the trees would bear the kinds of fruit known by the names of the trees.

There are two warranties binding upon a manufacturer who sells his own manufactured product:

> "MANUFACTURER'S WARRANTY AGAINST LATENT DEFECTS. One who sells or agrees to sell an article of his own manufacture thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture, and also that neither he nor his agent in such manufacture has knowingly used improper materials." (Civil Code, sec. 1769.)

(To Be Concluded)